IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2448 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? No

5. Whether it is to be circulated to the Civil Judge?No

SHANKERBHAI K VALAND

Versus

STATE OF GUAJRAT

Appearance:

Shri A.J. PATEL, Advocate, for the Petitioner.

Shri T.H. SOMPURA, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 25/04/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 24th July 1986 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on 16th January 1989 in Appeal No.Ahmedabad-175 of 1986 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 5930 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under section 6 (1) of the Act with respect to his holding within the urban agglomeration of Ahmedabad. That form was duly processed by respondent No.2. After observing necessary formalities under section 8 of the Act, by his order passed on 24th July 1986 under sub-section (4) thereof, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 5930 square metres. Its copy is at Annexure-H to this petition. The aggrieved petitioner carried the matter in appeal before the Appellate Authority under section 33 of the Act. It came to be registered as Appeal No.Ahmedabad-175 of 1986. By the order passed on 16th January 1989 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-I to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-H to this petition as affirmed in appeal by the appellate order at Annexure-I to this petition.

3. The petitioner's holding included three parcels of land bearing survey Nos.155, 156 and 400. He applied for exemption under section 20 (1) of the Act with respect to his entire holding. By the order passed by and on behalf of the State Government (respondent No.1 herein) on 14th September 1979, exemption under section 20 (1) of the Act with respect to the lands bearing survey Nos.156 and 400 came to be granted but was refused qua the land bearing survey No.155 on the ground that it was not used for cultivation for last several years. The Competent Authority excluded the exempted lands from the holding of the petitioner but included in his holding the land in respect of which no exemption was granted.

4. It is difficult to accept the submission urged before me by learned Advocate Shri Patel for the

petitioner to the effect that the land bearing survey No.155 will have to be excluded in view of the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF U.P. reported in AIR 1993 Supreme Court at page 2465. Apart from that contention of applicability of the aforesaid ruling of the Supreme Court, as rightly submitted by learned Assistant Government Pleader Shri Sompura for the respondents, the land or lands in question ought to have been put to agricultural use on the date of coming into force of the Act. In this context, for exclusion of the land or lands in question by pressing into service the aforesaid binding ruling of the Supreme Court, it would be necessary inter alia to show to the Competent Authority that agricultural operations were, in fact, carried on in the land or lands in question on the date of coming into force of the Act. The revenue records were perused by both the authorities below and they have found that it was kept fallow or uncultivated for a period ten years from 1975-76. It would mean that agricultural operations were, in fact, not carried on in the land bearing survey No.155 on the date of coming into force of the Act. In that view of the matter, as rightly submitted by learned Assistant Government Pleader Shri Sompura for the respondents, the aforesaid binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM (supra) will not come to the rescue of the petitioner.

5. Learned Advocate Shri Patel for the petitioner is however on a firmer footing in his submission to the effect that the land belonged to the joint family of the petitioner. It transpires from the material on record that the land was originally granted to the father of the petitioner as a pasayatha land and the petitioner inherited the land as a pasayatha land from his father. By virtue of what is popularly known as the Watan Abolition Act, the tenure of the pasayatha land was abolished and it was granted in the name of the petitioner on payment of its occupancy price. Merely because its occupancy was granted in the name of the petitioner would not mean that the land became the self-acquired property of the petitioner. Even at the cost of repetition, it may be reiterated that the land was granted as a pasayatha land to the petitioner's father and the petitioner inherited it as a pasayatha land on his father's death. The property, even as a pasayatha land, in his name would therefore be the property of the family and not his individual property. It transpires that the authorities below have lost sight of this aspect of the matter and have therefore not held the property to be the joint family property wherein the

petitioner's son or sons, if any, will have right by birth. The contrary conclusion reached by the authorities below cannot be sustained in law.

6. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures-H and I to this petition cannot be sustained in law. They have to be quashed and set aside. The matter deserves to be remanded to respondent No.2 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine keeping in mind the adult members in the family entitling a separate ceiling unit under the Act.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 24th July 1986 at Annexure-H to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 16th January 1989 in Appeal No.Ahmedabad-175 of 1986 at Annexure-I to this petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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